



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Document Printing Service, Inc.

**File:** B-256654; B-257051

**Date:** July 8, 1994

Hugo Teufel III, Esq., and Thomas A. Lemmer, Esq., McKenna & Cuneo, for the protester.  
Kerry L. Miller, Esq., Government Printing Office, for the agency.  
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably determined that protester was nonresponsible based upon conclusion that the protester's recent performance on contracts for similar work was inadequate, notwithstanding that the protester disputes the agency's interpretation of the facts, where the nonresponsibility determination is based on circumstances present at the time the decision was made.

### DECISION

Document Printing Service, Inc. (DPS) protests its rejection as nonresponsible under solicitation Nos. 1828-S and 3853-S, issued by the Government Printing Office (GPO) for short run printing and duplicating services for the Department of the Interior. DPS asserts that the nonresponsibility determinations lacked a reasonable basis and were made in bad faith.

We deny the protests.

Solicitation No. 1828-S was issued on November 23, 1993, and contemplated the award of a requirements contract for quality level 3 short run printing and duplicating services for Interior. DPS submitted the low bid in response to the solicitation, but by letter dated February 8, 1994, the contracting officer informed DPS that, based on its unsatisfactory performance on recent contracts for similar work, the firm was considered nonresponsible. Solicitation No. 3853-S was issued on February 24, 1994. DPS was declared nonresponsible for this solicitation on

March 30, also based on recent poor performance for similar work.<sup>1</sup>

The contracting officer's basis for determining DPS nonresponsible under both solicitations was a January 18, 1994, pre-award survey of DPS' plant. The agency concluded from the survey that concluded that DPS had questionable relevant experience in offset printing and was experiencing performance problems on program 1861-S, a recent contract it had been awarded for printing services. The contracting officer also considered that since December 1993 DPS had experienced performance problems on other GPO contracts. Specifically, two orders under program 3820-M and jackets 574-071, 574-072, 574-073, and 573-900 had been rejected as defective.<sup>2</sup> The contracting officer considered that the quality standards in these contracts were the same as or less stringent than the quality standards in the protested solicitations and questioned whether DPS could meet the higher quality standards since it was unable to meet the less stringent standards. Consequently, the contracting officer declared DPS nonresponsible.

DPS asserts that the nonresponsibility determinations were made in bad faith because an agency official was angry that DPS filed a protest concerning an earlier solicitation. In order to demonstrate bad faith, a protester must present convincing proof that the contracting agency directed its actions with the intent to injure the protester. Campbell Indus., B-238871, July 3, 1990, 90-2 CPD ¶ 5. There has

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<sup>1</sup>Despite DPS' status as a small business concern, the nonresponsibility determinations were not referred to the Small Business Administration (SBA) because GPO is a legislative agency and is not subject to the Federal Acquisition Regulation, which requires such a referral. See Custom Printing Co., 67 Comp. Gen. 363 (1988), 88-1 CPD ¶ 318; Fry Communications, Inc., 62 Comp. Gen. 164 (1983), 83-1 CPD ¶ 109. Rather, GPO conducts its procurements under its own Printing Procurement Regulations, which do not require that nonresponsibility determinations concerning small businesses be referred to the SBA. Id.

<sup>2</sup>GPO also reports that DPS' performance under program 2898-S was used as an additional basis to find DPS nonresponsible under program 3853-S. DPS disputes that its performance under this program was deficient. Since we conclude that GPO's decision that DPS was nonresponsible is reasonable for both solicitations 1828-S and 3853-S based on DPS' performance under programs 1861-S and 3820-M and jackets 574-071, 574-072, 574-073, and 573-900, we have not considered DPS' performance on program 2898-S in connection with the nonresponsibility determinations.

been no such showing here. The agency official that DPS allegedly angered was not responsible for making the nonresponsibility determinations, and there is no evidence in the record that she influenced or attempted to influence the contracting officer responsible for making the determinations. Moreover, although DPS believes that there is no reasonable basis supporting the nonresponsibility determinations, as we explain below, based on our review of the record, we conclude that the determinations were reasonable.

DPS asserts that GPO's nonresponsibility determinations were unreasonable because DPS' performance under the programs GPO relied on to find DPS nonresponsible was either not deficient or the deficiencies were minor or not attributable to DPS. Concerning program 1861-S, DPS explains that this was a contract for the Bureau of Land Management (BLM) which required quality level 4 and 5 printing. DPS asserts that it met these quality standards but BLM rejected orders that DPS submitted because BLM was not satisfied with the quality level 4 and 5 printing required by the contract. Regarding jackets 574-071, 574-072, 574-073, and 573-900,<sup>3</sup> DPS acknowledges that its performance was deficient. DPS asserts, however, that the defects were minor and that it readily corrected them. Similarly, DPS asserts that there were only two defective print orders under program 3820-M and that the deficiencies were minor and expeditiously corrected.

The GPO Printing Procurement Regulations (PPR) require the contracting officer to make an affirmative determination that a firm is responsible before awarding a contract to that firm. PPR § 5.1. In determining a prospective contractor's responsibility, the contracting officer is required to consider whether the contractor's record of performance is satisfactory. PPR § 5.4(iii). The contracting officer is vested with broad discretion in exercising his or her business judgment in making a nonresponsibility determination. Formal Management Sys., Inc., B-244512, Oct. 23, 1991, 91-2 CPD ¶ 362. Our Office generally will not disturb a nonresponsibility determination unless a protester can show either that the procuring agency had no reasonable basis for the determination or that it acted in bad faith. Id. The nonresponsibility determination may be based upon a reasonable perception of inadequate prior performance even where the contractor

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<sup>3</sup>DPS asserts that the agency did not consider jacket 573-900 in its nonresponsibility determinations. Our review of the determination and findings of the contracting officer concerning DPS' nonresponsibility shows that DPS' performance under jacket 573-900 was considered.

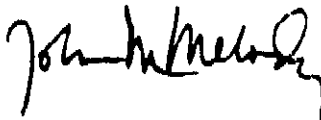
disputes the agency's interpretation of the facts or has appealed the agency's adverse determination. Firm Otto Einhaupl, B-241553 et al., Feb. 20, 1991, 91-1 CPD ¶ 192. In our review of nonresponsibility determinations, we consider only whether the negative determination was reasonably based on the information available to the contracting officer at the time it was made. Id.

Here, when he made the nonresponsibility determinations, the contracting officer reviewed information concerning DPS' poor performance under contracts with similar and less stringent quality standards. Specifically, as discussed above, he primarily based his decision that DPS was nonresponsible on DPS' deficient performance under programs 1861-S and 3820-M and jackets 574-071, 574-072, 574-073, and 573-900. DPS does not dispute that its performance under the four jackets and under program 3820-M was deficient, but instead argues that the deficiencies were so minor as to be an inadequate basis for determining that DPS was nonresponsible. However, DPS' characterization of the deficiencies and its disagreement with the contracting officer's conclusion that the deficiencies in those orders raised questions about DPS' ability to perform similar work does not demonstrate that the decision was unreasonable.

Concerning program 1861-S, while DPS asserts that its performance was not deficient because BLM was requiring DPS to perform at a quality level higher than that required by the contract, at the time he made the determination, the information before the contracting officer showed that BLM considered DPS' performance under program 1861-S to be deficient. The contracting officer had no information, and DPS does not assert that it provided information prior to filing its protest, to the effect that BLM was requiring DPS to perform at a quality level greater than that required by its contract or, indeed, that any performance problems were attributable to such a more stringent requirement. Thus, based on the record before him at the time the decision was made, the contracting officer had a reasonable basis to conclude that DPS' performance was deficient. The contracting officer is not required to conduct an independent inquiry to substantiate information in a pre-award survey or file that raises questions concerning the

contractor's ability to perform. See International Paint USA, Inc., B-240180, Oct. 30, 1990, 90-2 CPD ¶ 349. We conclude that the contracting officer reasonably determined that DPS was nonresponsible.

The protest is denied.

  
for Robert P. Murphy  
Acting General Counsel

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'In his determination and findings, the contracting officer also stated that DPS did not have a workable system in place to prevent the production and distribution of defective products. DPS disputes this finding and argues that it in fact does have a quality control system in place. Since we conclude that DPS was reasonably determined to be nonresponsible, we have not considered this issue. In this regard, even if a contractor has a quality control system in place, if its performance is deficient, the quality control system would not prevent the contracting officer from reasonably concluding that the firm is nonresponsible.